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9 *Attorneys for the Fire Victim Trustee*

10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 In re:

14 **PG&E CORPORATION,**

15 **- and -**

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**
18 **Debtors.**

- 19 ☐ Affects PG&E Corporation
20 ☐ Affects Pacific Gas and Electric Company
21 ☒ Affects both Debtors

22 ** All papers shall be filed in the Lead Case,*
23 *No. 19-30088 (DM).*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**FIRE VICTIM TRUSTEE'S OBJECTION
TO LETTER REQUEST OF MEJIA
HOUSEHOLD TO DEEM LATE PROOF
OF CLAIM TIMELY FOR THE PURPOSE
OF ADMINISTRATION BY THE FIRE
VICTIM TRUST**

[Relates to Docket Number 13305]

Hearing Date: January 10, 2023
Hearing Time: 10:00 a.m.

Place: Hearing will be conducted telephonically or
by video

1 Cathy Yanni, in her capacity as the Trustee (the “**Trustee**”) of the Fire Victim Trust
2 (“**Trust**”), by and through her undersigned counsel, hereby submits this objection to the letter
3 request of the Mejia Household (“**Movants**”) on November 30, 2022 [Dkt. 13305] (the “**Mejia**
4 **Letter**”). In support of this Objection, the Trustee respectfully states as follows:

5 **PRELIMINARY STATEMENT**

6 The Fire Victim Trust understands that the Fires caused by PG&E in 2015, 2017 and 2108
7 made it hard for survivors to undertake many everyday tasks due displacement, trauma and other
8 factors. The Trust has been extremely accommodating with respect to late claims and has made
9 every effort to allow as many Fire Victims as possible to present their claims to the Trust for
10 consideration. Nevertheless, the Trustee must balance a desire to ensure as many Fire Victims as
11 possible are compensated injuries arising from the Fires against the fact that **82,692** Fire Victims,
12 many of whom suffered horrific losses, were able to timely file proofs of claim in these cases. The
13 Trustee also is mindful of the fundamental difference between claimants who file motions to have
14 long-filed late proofs of claims deemed timely after receiving notice from the Trust that such action
15 is necessary and those who file motions shortly after years-late proofs of claim are filed (or, as in
16 this case, file a proof of claim after submitting a letter request).

17 In an effort to quell the rising tide of late claim motions being filed in this case, the former
18 Trustee decided to stop stipulating to the relief requested in late claim motions.in mid-May of this
19 year. While that decision initially seemed to slow the number of motions being filed, once it
20 became clear that late claim motions were still being granted, the number of such motions being
21 filed began to increase again. Since the former Trustee stopped stipulating to the relief requested in
22 late claim motions, motions and letters have been filed requesting that the Court deem well over
23 1,000 proofs of claim “timely” for the purpose of administration by the Trust. The majority of these
24 letters and motions have not presented unique circumstances but instead duplicate previously filed
25 late claim letters and motions. One hundred fifty-five (155) late claim motions were filed in August
26 alone, prompting the Trustee to state in several filings with this Court that the Trust would have to
27 discontinue its liberal non-opposition policy with respect to late claim motions filed after
28 September 30, 2022. The deadline reflected the recognition that the assets available to the Trust to

1 pay claims (including the PG&E stock held by the Trust) do not account for the extreme increase in
2 the number of new proofs of claim being filed in the last six months.

3 Unfortunately, the Trustee's statement regarding the change in policy prompted an
4 astounding 672 late claim motions to be filed on September 30, 2022 alone. To put these numbers
5 in perspective, in 2020, which included the months immediately after both the extended bar date
6 and the effective date of the Trust (both events that could be expected to prompt the filing of late
7 claim motions), the total number of late claim motions filed alleging Fire Victim Claims was 55. In
8 2021, the total number was only 22. The Trust had no reason to expect the magnitude of the late
9 claim motions and letters filed in the last six months based on historical data. These late claim
10 filings have covered *more than thirteen times the number of late proofs of claim addressed by*
11 *late claim motions filed in the previous two years combined.* Most of these late proofs of claim
12 (including Movants' December 3, 2022 proof of claim) were only recently filed. It is especially
13 important that the Court recognize that *none of these thousands of late-filed proofs of claim were*
14 *considered when the amount of the Aggregate Fire Victim Consideration¹ was determined and*
15 *agreed to* by the Official Committee of Tort Claimants (the "TCC") and counsel representing
16 holders of Fire Victim Claims. Movants and all other late claimants are requesting that the Court
17 allow them to share in a limited fund that was expected to fully compensate only those claimants
18 who filed timely proofs of claim. In addition, all of these new, unanticipated claims must be
19 reviewed, evaluated and determined before the Trust can make final payments to any of the tens of
20 thousands of Fire Victims who have complied with all of the Trust deadlines and who must wait
21 until all approved claims are determined to learn how much of their approved claims can be paid.

22 As of December 12, 2022, the Trust had awarded determination notices for 90% of all claim
23 questionnaires that have been submitted to the Trust. The awards associated with those
24 determination notices total \$14.04 billion. Until all claims are determined, all determinations are

26 ¹ Capitalized terms used but not defined herein have the meanings ascribed such terms in the
27 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization dated June 19,
28 2020 (the "**Plan**").

1 accepted and all of the Trust's PG&E Stock is fully monetized, the Trust is unable to predict with
2 certainty the amount of funds available to pay Fire Victim Claims.

3 **RELEVANT BACKGROUND**

4 1. On January 29, 2019, PG&E Corporation ("**PG&E Corp.**") and Pacific Gas and
5 Electric Company ("**Utility**"), as debtors and debtors in possession (collectively, "**PG&E**" or the
6 "**Debtors**"), commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code
7 (the "**Chapter 11 Cases**"). The Reorganized Debtors filed the Chapter 11 Cases to address the
8 billions of dollars of damage and loss relating to the devastating 2015, 2017 and 2018 California
9 fires and to provide compensation to wildfire victims.

10 2. On February 12, 2019, the United States Trustee (the "**U.S. Trustee**") appointed an
11 Official Committee of Unsecured Creditors. On February 15, 2019, the U.S. Trustee appointed the
12 TCC.

13 3. On March 14, 2019, the Debtors filed their schedules of assets and liabilities. By
14 Order dated July 1, 2019, the Court established October 21, 2019 (the "**Bar Date**") as the last date
15 to file proofs of claim in the Chapter 11 Cases [Docket No. 2806] (the "**Bar Date Order**"). By
16 Order dated November 11, 2019, the Court extended the Bar Date to December 31, 2019 (the
17 "**Extended Bar Date**") for unfiled, non-governmental Fire Claimants [Docket No. 4672] (the
18 "**Extended Fire Victims Bar Date Order**")

19 4. The Extended Fire Victims Bar Date Order was entered in response to a motion filed
20 by the TCC. The TCC argued that the Bar Date "should be extended for the fire victims on the
21 ground that evidence filed herewith establishes that a large number of victims are not filing claims
22 in these chapter 11 cases because they are impaired from filing. Their impairments include
23 emotional distress, suffering from trauma caused by the wildfire that destroyed everything they
24 own, confusion caused by the trauma, a lack of awareness of the fire claims bar date, and a belief
25 that a claimant needs to be insured to file a claim." [Docket No. 4293 at 5:2-8]. The Court has
26 already considered and addressed the adequacy of notice to Fire Victims. As a result of the Court's
27 careful consideration of this issue and the thoughtful manner in which the Debtors redoubled their
28 efforts to reach additional Fire Victims, which included the appointment of a Claims

1 Representative who designed and implemented with his team an expansive outreach effort designed
2 to identify, locate, and assist Fire Victims who were eligible to file claims but failed to do so by the
3 original bar date, many thousands of claimants, some of whom suffered unfathomable losses, were
4 able to file their claims in a timely manner.

5 **OBJECTION**

6 5. While courts have decided that there is no harm to *the debtor* in allowing late claims
7 to be considered when a solvent debtor is paying all claims in full in a bankruptcy case, in this case
8 the Debtors are not paying any additional consideration to the Trust no matter how many late
9 claims are added. Pursuant to Section 6.8(b) of the Plan and Paragraph 18(e)(iii) of the
10 Confirmation Order, the Trustee has stepped into the Debtors' shoes with respect to Fire Victim
11 Claims. The relevant inquiry in a request to deem a late Fire Victim Claim timely is how the
12 requested relief will affect the *Trust* rather than the Debtors.

13 6. All Fire Victim Claims that have been determined by the Trust so far have taken into
14 consideration the number of Claims that were left to be paid *as of the date those determinations*
15 *were made*. Unexpected late claims, unknown to the Trust, were not considered. The ever-
16 increasing number of claimants seeking to have Fire Victim Claims channeled to the Trust calls
17 into question whether the Trust will be able to increase the pro rata percentage beyond the current
18 45%, making it objectively detrimental to tens of thousands of claimants who filed their claims
19 before December 31, 2019, and who submitted their Claims Questionnaires to the Trust by
20 February 26, 2020, to continue to allow late claims into the Trust. Every late claim channeled to
21 the Trust – even those that are ultimately deemed ineligible – takes time and money from claimants
22 who have met all deadlines and are waiting for their final payments.

23 7. As the Supreme Court has recognized, Bankruptcy Rule 9006(b)(1) permits court
24 bankruptcy courts to accept proofs of claim filed after the bar date where appropriate in cases of
25 excusable neglect due to inadvertence, mistake, carelessness or circumstances beyond the
26 claimant's control. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S.
27 Ct. 1489, 123 L. Ed. 2d 74 (1993). As the dissent in *Pioneer* recognized, however, "the statute
28 does not *require* the court to forgive every omission caused by excusable neglect, but states that the

1 court “*may*” grant relief “in its discretion.” *Id.*, 507 U.S. at 399, 113 S. Ct. at 1500 (emphasis in
2 original).

3 8. The threshold determination to be made under Bankruptcy Rule 9006(b)(1) is
4 whether Movants’ failure to file their proof of claim in this case resulted from excusable neglect.
5 Notably, in *Pioneer*, counsel had filed the claimant’s proof of claim a mere 20 days late and the
6 Supreme Court found that the bar date notice in that case contained a “dramatic ambiguity.” By
7 contrast, the notice of the Extended Bar Date was the ***second*** notice provided to Fire Victims and
8 included coordinated on-the-ground efforts to inform Fire Victims of the deadline to file ***any*** claims
9 arising from a Fire and assist in the process of filing proofs of claim. Yet Movants’ proof of claim
10 was not filed until 1,065 days (2.9 years) after the Extended Bar Date.

11 9. As this Court has recognized, claimants who file late proofs of claim bear “the
12 burden of presenting facts demonstrating excusable neglect.” *In re Pacific Gas & Elec. Co.*, 311
13 B.R. 84, 89 (2004) (citing *Key Bar Invs., Inc. v. Cahn (In re Cahn)*, 188 B.R. 627 (9th Cir. BAP
14 1995)).

15 10. In *Pioneer* the Supreme Court applied the majority of what was then the Ninth
16 Circuit test for determining whether a failure to timely file a proof of claim was due to excusable
17 neglect: (1) whether granting the delay will prejudice the debtor; (2) the length of the delay and its
18 impact on efficient court administration; (3) whether the delay was beyond the reasonable control
19 of the person whose duty it was to perform; and (4) whether the creditor acted in good faith. *Id.*,
20 507 U.S. at 395, 113 S. Ct. at 1498.

21 11. The first consideration in determining whether a late claim filing was the result of
22 “excusable neglect” under *Pioneer* is the danger of prejudice to the debtor. This factor is irrelevant
23 in the present case with respect to the Debtors because the Trust has stepped into the Debtors’
24 shoes with respect to Fire Victim Claims. While it is true that the relief requested in the Mejia
25 Letter will not prejudice the *Debtors*, which have already satisfied their funding obligations to the
26 Trust under the Plan, it clearly prejudices the Trust and its beneficiaries. As noted above, the
27 Trustee is now the representative of each of the Debtors’ estates with respect Fire Victim Claims
28

1 and as such is vested with the authority and power to, among other powers, “administer, object to
2 or settle Fire Victim Claims.”

3 12. The Supreme Court recognized that “that the determination is at bottom an equitable
4 one, taking account of all relevant circumstances surrounding the party's omission.” *Id.* The Mejia
5 Letter does not address the prejudice to Fire Victims who timely filed their proofs of claim, much
6 less establish a lack of prejudice. Equity does not support the late filing of a proof of claim simply
7 because claimants are unaware that their particular claims might be compensable, especially when
8 thousands of other claimants with similar claims were able to file timely proofs of claim.

9 13. The second consideration under Pioneer is the length of delay and its potential
10 impact on judicial proceedings. Movants’ proof of claim was filed 1,065 days after the Extended
11 Bar Date – three years after others with similar claims filed proofs of claim. As noted above, the
12 Trust has a limited fund from which to pay all Fire Victim Claims. As such, the Trust cannot
13 finally determine how much it can pay on account of any Fire Victim Claim until it adjudicates
14 every Fire Victim Claim. The continued addition of claims to the Fire Victim Trust prevents the
15 Trust from allocating its limited funds and further extends the time that claimants who timely filed
16 their Fire Victim Claims must wait for final payments, thus delaying the administration and final
17 payment of Fire Victim Claims and prejudicing those who hold timely filed Fire Victim Claims
18 with delay and a reduction in the amount of their final compensation.

19 14. The addition of claims such as Movants’ also increases the number of claimants
20 among which the limited funds of the Trust must be divided. Each late claim motion also must be
21 reviewed and considered by the Trust, which incurs professional fees. Each late claim motion
22 reduces the funds available to distribute to Fire Victims even if it is ultimately denied. The extreme
23 length of Movants’ delay and the of any explanation for that delay weighs heavily against granting
24 this request.

25 15. The third *Pioneer* factor, whether the delay was beyond the late claimant’s control,
26 also weighs against granting the relief requested by Movants. The Mejia Letter provides no
27 explanation for why their proof of claim was filed nearly three years after the Extended Bar Date.
28 Nothing in the Mejia letter provides a basis for finding that Movants were unable to file a proof of

1 claim before the Extended Bar Date for reasons beyond their control.

2 16. While the Trustee does not believe that Movants lacks the good faith that comprises
3 the final consideration listed by the *Pioneer* court, it is clear from the Mejia Letter that Movants
4 were not somehow prevented from filing a timely claim.

5 17. In addition, as is evidenced by overwhelming number of late claim motions filed
6 within the last week alone, allowing Movants' claim to be deemed timely filed at this stage would
7 encourage other latecomers to file similar motions. Such a result would be grossly inequitable to
8 those holding timely filed Fire Victim Claims, who are waiting for closure that cannot come until
9 the Trust is able to administer the last Fire Victim Claim.

10 18. Movants therefore fail to meet the standard for establishing "excusable neglect" for
11 filing a proof of claim nearly three years after the Extended Bar Date. The relief requested in the
12 Mejia Letter should be denied.

13 **CONCLUSION**

14 For the foregoing reasons, the Trustee respectfully requests that this Court deny the relief
15 requested in the Mejia Letter and grant such other and further relief as may be just.

16
17 DATED: December 14, 2022

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